



From Ratification to Compliance: Quantitative Evidence on the Spiral Model

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From ratification to compliance: quantitative evidence on the spiral model

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Human rights researchers have discovered quantitative indicators and methods. As a result, for better or for worse, human rights research has joined the mainstream approach to social science research in the past decade. The systematic comparison of specific hypotheses, followed by controlled hypothesis testing using a range of indicators of rights now easily accessible in carefully constructed, well-vetted and widely and freely available datasets is becoming an important mode for studying human rights. This has allowed both rights advocates as well as rights skeptics to plumb their conceptions of the causes and consequences of the international human rights regime.

The dedicated efforts of scholars, organizations and rights advocates to produce comparable, consistent and carefully constructed indicators for various aspects of human rights realizations has been a boon to research. Used carefully, critically and with an appreciation for its inherent limits,¹ quantitative research has the potential to check whether understandings generated from case studies can be generalized. It can also suggest systematic ways in which our “theories” might be amended or conditioned. The purpose of this chapter is to review the relatively recent (and mostly quantitative) research in precisely this spirit. My focus is primarily on the arguments advanced over a decade ago in what at that time was one of the most carefully executed and theoretically motivated explorations of the relationship between international human rights norms and actual practices: the “spiral model” developed by Thomas Risse, Stephen Ropp and Kathryn Sikkink in *The Power of Human Rights* (1999; PoHR in the following). The first section sets out in brief the original elements of PoHR’s theory of how international human rights norms have practical effects on human rights practices. The second section compares the theoretical assumptions and causal claims of the spiral model with the last decade’s cascade of quantitative research. PoHR was fairly explicit about the conditions under which they expected human rights norms to influence outcomes, and the specific mechanisms through which they thought a dynamic of normative change could take place.

¹ See the discussion of limitations in Simmons (2009).

The chapter concludes by assessing the extent to which on the whole qualitative and quantitative research findings are mutually reinforcing. In contrast to claims that methodological differences have driven a wedge between researchers from varying methodological traditions, I find that the combination of qualitative and quantitative research has greatly improved our parallax on human rights. Indeed, there is just as much if not more cacophony *within* the quantitative school and *among* qualitative researchers than there is *across* approaches. I also find that while no one has been able (or motivated) to test quantitatively the spiral model in its entirety, a good deal of quantitative research is consistent with what we might have expected to observe if the major claims of the model do indeed capture certain aspects of reality. However, parts of the original model are quite indeterminate and therefore consistent with a broad range of possible tests and outcomes. Nonetheless, I argue that the way forward is not to construct unnecessary methodological divisions among social scientists, but rather to develop and refine our research using the best tools available and appropriate for the research question. For the most part, this means using mixed methods and developing partnerships to refine and test theories that are not only innovative, but that explain a lot of what appears at first to be confusing about the world in which we live.

The power of empirical research

A necessary condition: political liberalization, domestic structural reform

The spiral model attempts to explain how international human rights norms come to influence actual human rights practices domestically. No one – PoHR included – has ever proposed a single statistical test of the spiral in its entirety. Yet there is a growing body of research that addresses at least parts of the model PoHR proposed over a decade ago. Some of the relationships documented in the quantitative scholarship are at least partially consistent with PoHR's theoretical expectations. The unique contribution of the model was the series of dynamics it proposed. Quantitative research has shed light on a few static relationships, capturing one or two “phases” of the model at best. This is hardly surprising, since quantitative researchers never set out explicitly to test for the model PoHR proposed.

PoHR began with one huge caveat: “Stable improvements in human rights conditions usually require some measure of political transformation and can be regarded as one aspect of [the political] liberalization process” (PoHR: 4). Rights cannot be expected to improve much – much less become “habitual” – in the absence of broader political liberalization. External norms and even external political pressure cannot be expected to sustain significant rights improvements unless there are fundamental changes in the domestic institutions of

accountability and governance. If there is one clear message from the quantitative literature, it is that this basic assumption is largely warranted. Practically every regression that has ever been run finds a strong and convincing positive correlation between human rights – or more specifically, broadly accepted measures of physical integrity and political repression, the rights outcomes with which PoHR were primarily concerned – and various measures of political liberalization (typically the polity scale, which largely gauges institutions of participatory democracy; see Apodaca 2001; Landman 2005a; Neumayer 2005; Poe *et al.* 1999). Below a certain level, however, small improvements in democracy indicators have little to no influence on repressive human rights (Buena de Mesquita *et al.* 2005; Davenport and Armstrong 2004).² “Show-case” democracies tend to experience only brief and reversible improvements in the basic human rights of their opponents (Cingranelli and Richards 1999). Clearly, these are not the regimes for which respect for human rights norms are likely to become “habitual.”

PoHR also acknowledged the related idea that sustained improvements in human rights practices were conditioned by the broader legal and judicial capacities of the country in question: “We argue that the enduring implementation of human rights norms requires political systems to establish the rule of law” (PoHR: 3). The spiral could launch, but would sputter and eventually fail if other institutional changes did not take place in which norms could find domestic traction and eventually enforceability. Quantitative researchers have found some evidence for the proposition that countries with more highly developed legal institutions, and in particular independent judiciaries, do tend to have better civil rights protections, for example guarantees against unreasonable search and seizure (Cross 1999) and better access to fair trials (Simmons 2009). As will be discussed below, domestic legal and institutional mechanisms that are able independently to check government policies are increasingly proposed and tested in the quantitative literature as a mechanism through which international human rights norms eventually gain sufficient domestic traction to change rights practices overall.

It is not surprising, given their skepticism for long-term normative “internalization” in the absence of deeper governing and institutional changes, that PoHR did not have especially high hopes for international human rights norms in the context of the countries in their edited volume. None of the countries in their volume were stable democracies over the course of the past fifty years. Uganda, Tunisia and Morocco were never governed as democracies by

² Simmons (2009) found a similar result for a related right: the right to a fair trial. “Democratization” – or incremental yearly movements on the polity scale – was only associated with improvements in the provision of a fair trial among the subset of countries that were basically already decades-long stable democracies, but not stable autocracies or transitioning regimes (Table 5.3, p. 184).

traditional standards. South Africa, Kenya, Chile, Guatemala, the Philippines and Indonesia can be considered “transitional,” “transitioned” or “partial” democracies, but they vary considerably in terms of the strength of their traditions of governing by the rule of law, with Chile at the strong end of the spectrum (also to a certain extent Morocco) and Guatemala at the weak end.³ From the outset, PoHR considered all of these countries to varying degrees “hard cases” and expected international norms to fare differentially across them (PoHR: 2). In the end, they professed a degree of “surprise” with the power of human rights ideas in some cases (in Chile, Guatemala and Indonesia) but were also dismayed in others (Tunisia and Kenya; PoHR: 3). Could these differences be explained by broader trends in democratization and judicial and legal reform, or the specific mechanisms of the spiral model itself?

Phase 1: repression activates transnational civil society groups

Non-governmental organizations have been at the heart of understanding how and why human rights values became salient internationally in the twentieth century. Human rights have been championed by civil society actors, and embraced by most governments far more grudgingly. This is the natural consequence of the content of these rights; they tend to empower individuals and civil society groups vis-à-vis their governments. The qualitative literature has been dominated by studies of the importance of civil society groups, non-governmental organizations, and transnational advocacy networks in moving the human rights agenda forward (Korey 1998) and contributing to the “legalization” of these norms in international law (Breen 2003; Clark 2001; Cohen 1990; Dezalay and Garth 2006). NGOs are now said to constitute “external legitimating audiences” that keep the unlimited exercise of state sovereignty to some degree in check (Friedman *et al.* 2005).

PoHR made fairly specific claims about the role of NGOs. They put most of their emphasis on the mobilization of *transnational* human rights organizations and networks in the *early* stages of the spiral. They highlighted the informational as well as the advocacy roles of these groups, with a special focus on their linkages with the West (PoHR: 5). External pressure generated and sustained by these groups is central in the spiral model to “remind liberal states of their own identity,” protect domestic groups by giving external legitimacy to their claims, and to keep up the pressure “from above,” crucially supplementing that “from below” (PoHR: 5). Transnational human rights networks are therefore hypothesized to be crucial actors in the process of state socialization.

Quantitative research has a tough time convincingly distinguishing the mechanisms of persuasion, bargaining, incentive manipulation and shaming

³ In order to avoid an extended debate and justification for these categories, I have simply used the categorization presented in Simmons (2009: Appendix 2).

that have become central to socialization theory. This reflects the broader difficulties the diffusion literature has in distinguishing mechanisms of coercion from adaptation from emulation from internalization (Simmons *et al.* 2008): it is hard to infer motives from statistical correlations. One cut at this problem is simply to use statistical methods to test the proposition that the density of NGO networks is at least loosely associated with observable indicators that governments might be becoming “socialized.” Global statistical data on the nature and strength of these networks is not especially nuanced. Several quantitative researchers have used “the number of international NGOs with domestic participation” which they “interpret as a measure of civil society strength” to try to capture this argument. While it does not prove the dynamics of the spiral model as a whole, most studies find what PoHR would expect: that there is a correlation between local memberships in international non-governmental organizations and better rights practices, where the dependent variable is Freedom House’s measure of civil and political rights or the Political Terror Scale (Neumayer 2005) or personal integrity rights (Hafner-Burton and Tsutsui 2005). Such findings of course do not confirm the spiral model *in toto*, but they are *roughly* consistent with its expectations. Since PoHR claims that domestic civil society actors are more important *later* in the cycle, the *domestic* memberships in INGOs used in the studies above should intensify when denial subsides and tactical concessions are on the rise. Few quantitative tests that are sensitive to such timing have been done, but according to one study there appear to be spikes in local ties to INGOs *after treaty ratification* (which one might think of as either a tactical concession or possibly prescriptive behavior, depending on whether one views such moves as strategic or sincere (Simmons 2009)). Again, while these tests were not designed to test PoHR’s spiral, they do suggest a rough correspondence with the qualitative story told by their research.

Governments make tactical concessions

The spiral model is intriguing because in some sense it appears to rest on an irrational logic. Governments take what they think will be inconsequential policy actions that they think may mollify their international and external critics. In PoHR’s account, these actions often end up entrapping repressive governments (PoHR: 16). This is a core point on which PoHR diverges starkly with realist accounts of human rights. Many quantitative as well as qualitative scholars simply refuse to accept the PoHR premise – that tactical concessions matter to the big picture of human rights politics or practices. What matters is *enforcement* of norms, and this is what they all tend to assume is radically AWOL in the area of international human rights. Talking the talk is just that. Walking the walk, PoHR’s theoretically opponents believe, requires much more forceful action (Downs *et al.* 1996; Goldsmith and Posner 2005; Hafner-Burton 2005; Krasner 1999), in the absence of which governments might even commit worse

abuses behind the shield of their concession (Hafner-Burton 2008). Tactical concessions such as treaty ratification have been characterized variously as an exercise in “public relations” (Keith 1999), “window-dressing” (Hafner-Burton and Tsutsui 2005), or a (mere) “expressive” gesture (Hathaway 2002) that brings no consequences in practice. Ultimately, these authors all stress, tactical ratification does not matter to rights practices because treaties are not enforced. “As long as enforcement of a human rights treaty remains relatively weak, countries with egregious human rights records will join it purely for the symbolic benefits that ratification confer” (Cole 2005: 492).

If PoHR’s rhetorical entrapment argument is correct, it does raise a tough question: why can’t repressive governments foresee the communicative quicksand they are about to wade into and steer clear of it in the first place? PoHR has three answers. First, governments miscalculate, and they do so *systematically*: “When they make these minor concessions, states almost uniformly overestimate their own support among their population” (PoHR: 27). Somewhat mysteriously, governments apparently don’t learn, either over time or from the experiences of other governments’ experiences, that minor concessions can lead to a real political quagmire. Second, they may be bribed. Third, governments might be in the early throes of socialization. Saying (or better yet, doing) is believing. A certain amount of self-persuasion may very well be underway.

Miscalculation is a possibility, but it is likely only to obtain under a narrow set of circumstances. Not all governments are equally likely to miscalculate. Stable governments presiding over stable regimes in particular are likely to be able to make good predictions about the likely outcome of their tactical concessions. Repressive governments might decide to make a tactical concession to their political opposition, and if they encounter hopeful expectations of liberalization respond with further repression. Some will be able to forecast quite well their ability to “manage expectations,” even if they need to use more repression to do so (Vreeland 2008).

Where conditions are in flux, however, such estimations have much greater confidence intervals around them. Tactical concessions could lead to “unexpected consequences” under conditions of turmoil and change. This argument is consistent with the results of some quantitative research that suggests that the ratification of international treaties (very likely tactical in some cases) tends to be most positive and significantly correlated with improved rights practices in neither stable democracies nor stable autocracies (where their consequences are relatively predictable) but in countries undergoing various degrees of regime transition, where it is much harder for a government to foresee the social and political consequences of its actions (Simmons 2009).

We can also hypothesize that miscalculation is more likely where information is very thin, and then test for a relationship between the information environment and the tendency to make tactical concessions. States are more likely to bend to international pressures when they cannot forecast very well the

consequences predicted by the spiral model. Quantitative tests are few, but one study found “emulative” treaty ratification behavior to be strongest where the information environment was most thin: in regions of the world where information was stifled by government controlled media and earlier in the life of the human rights regime, where the record of the consequences of tactical ratification was still sparse (Simmons 2009). This could mean that poor information accounts for some of the miscalculation associated with cynically adopting international norms.

But even with poor information, why should we expect governments to “uniformly” underestimate the pressure they will face to further liberalize? One possibility is that forecasts are only relevant in the short run. Some quantitative evidence suggests the shorter a repressive government’s time horizon, the more likely it is to make a human rights concession; if its discount rate is high enough the immediate praise for doing so may simply outweigh the longer term consequences in terms of galvanizing political demands for further rights guarantees (Simmons 2009). The short-term benefits may exceed the (high discounted) future costs.

The second possibility – external bribery – has been the subject of some quantitative empirical investigation. It is relatively straightforward to analyze whether governments make tactical human rights concessions in response to various material or even non-material inducements offered by outsiders. The most straightforward case can be made for aid: it is relatively easy for donor governments to manipulate aid to reward concessions they believe to be important. But quantitative research does not unambiguously support the proposition that aid responds to human rights policies – tactical or genuine. A study of the UK aid policies found that aid responded to human rights if at all when important foreign or economic policy interests were not at stake (Barratt 2004). Studies of European aid conclude that despite attention to “soft power” the human rights situation in developing countries does not consistently shape European aid commitments (Carey 2007). The United States’ aid policy has also been constrained by broader foreign policy concerns. During the Cold War, aid went to repressive and non-repressive governments alike, although in the 1990s military aid did tend to flow less readily to the more repressive regimes (Blanton 2005). The United States seems somewhat more willing to use aid to encourage rights improvements when they have a significant potential to impact the United States, as in the area of human trafficking (Chuang 2005–2006), but otherwise the response of US aid to rights concessions of any kind is weak. It is hard to see how aid might be used in a targeted way to encourage human rights concessions, especially ones that are merely tactical.

The responsiveness of multilateral aid to human rights policies is similarly inconclusive. On the one hand, some studies have concluded that countries that receive loans from the World Bank are likely to have better workers’ rights than those who do not (Abouharb and Cingranelli 2004), which appears consistent

with the use of aid as a reward for human rights practices. On the other hand, other studies have emphasized that the austerity implied by multilateral loan conditions actually makes the realization of a range of rights less likely (Fields 2003; Franklin 1997). If this is the case, it is not very likely that these organizations care enough about tactical concessions to target their aid contingent upon it. More likely, they are simply not paying attention. If the rights abuse is significant enough to be investigated and censured by the UN Human Rights Commission, multilateral lenders may take more note (Lebovic and Voeten 2009). But this finding does not support the claim that *tactical concessions* are bought and paid for through international foreign aid. (I return to this point when discussing the role of external pressure in encouraging *real* human rights improvements, below).

Even more strained are arguments (and evidence) that tactical concessions are made to attract trade or investment. Such arguments have a series of high hurdles to overcome: to explain why economic agents might care about human rights practices; to explain why governments would be willing to interfere with private investment decisions that do not involve serious national interests, and to explain why either public or private actors would take a tactical concession seriously. Political economists have put forward the idea that certain human rights policies that we may think of as tactical serve as a signal of a government's willingness to accept principles limits on its exercise of power. A government willing to commit to respect human rights is also likely to respect property rights, the argument goes (Farber 2002; Moore 2003). There is some evidence that suggests that countries with less repressive rights practices tend to attract more foreign capital (Blanton and Blanton 2007), but surely this is only the case when rights are a part of a deep commitment to stable institutions, transparency in governance and the rule of law. If one could achieve all of the above and yet cut costs by repressing labor, it is not likely that traders or investors would mind all that much.⁴

As a global matter, however, the evidence for rewarding tactical concessions appears weak. Despite claims that governments ratify treaties, for example, for tangible economic benefits such as aid, trade or investment (Hathaway 2004; Hawkins and Goodliffe 2006), researchers have found relatively little empirical evidence that any of these increase significantly when governments ratify major human rights treaties (Nielsen and Simmons 2009). While much more work should be done on how international and domestic actors respond to a range of tactical concessions, the evidence to date hardly suggests that actors are satisfied with and thus reward in any material way these mere gestures. And why should

⁴ New research suggests that there may indeed be competitive pressures generated through trade with countries with high labor standards. If firm X wants to sell its goods in high labor standard Country A they will be pressured to improve labor practices at home and in third countries where they produce their goods. As a result, countries tend to adopt labor practices that are similar to the countries to which they export. See for example Greenhill *et al.* (2009).

they? Only an irrational or uninformed actor would reward a government for an insincere policy concession (Goodman and Jinks 2004).

There remains the possibility – the one most theoretically central to the case that PoHR wishes to make about socialization – that tactical concessions are expected and believed to be appropriate measures given the growing significance of external norms, the increasing domestic hopes for rights recognition, and the density of transnational connections that link the two. PoHR makes frequent appeals to the concept of “world time” – the global social context in which communicative action takes place. Some quantitative research supports the idea that tactical human rights concessions respond at least in part to the global social context. Sociologists have gathered evidence that the ratification of some human rights treaties (the Convention on the Elimination of Discrimination Against Women, for example) is associated with major global socializing events that promote rights, such as international conferences and meetings. They also adduce evidence that the more states are “embedded” in international institutions, the more likely they are to ratify international human rights agreements (Wotipka and Ramirez 2008). Similar evidence about the importance of international socializing events has been advanced for what may be the “tactical” adoption of national human rights institutions (Koo and Ramirez 2009). These could be the kinds of persuasive opportunities that PoHR believes encourage states to take at least small steps toward addressing the abuses exposed by their critics.

The quantitative evidence overall suggests that there are both internal and external influences on tactical treaty ratification. While concessions in some areas, such as women’s rights, seem to be closely connected with all-out socialization efforts by the international community, in other areas, such as torture and civil and political rights, external pressures may exist but governments have to be exceptionally attuned to the domestic political situation. The quantitative evidence linking ratification of the torture convention to the existence of opposition political parties in repressive regimes supplies some support for the making of tactical concessions, as described in the spiral model (Vreeland 2008). So too does the finding that non-democracies with poor human rights records are more likely to ratify the torture convention than are democracies with poor human rights records (Hathaway 2007) – the former do not foresee the real probability of enforcement, at least in the short run. The finding that ratification of the International Covenant on Civil and Political Rights tends to be later rather than earlier in the term of a repressive government (Simmons 2009) suggests that short time horizons may have something to do with these choices. Most quantitative researchers are likely to agree with PoHR that *some* governments make *some* tactical concessions.⁵ There is disagreement on *why*

⁵ Note, however, that many quantitative as well as qualitative studies suggest that the same “concessions” are not always tactical across countries. One of the strongest predictors of

(internal dynamics versus external material or social pressures; socialization versus cynical calculations). But on this point PoHR was ambiguous as well. Suffice it to say that influences “from above” as well as “from below” have been at work in various regions of the world, at different points in time, and with respect to different aspects of the international human rights regime, to create a certain number of tactical concessions to rights norms. The central issue is: do these concessions matter for the practice of human rights around the world?

The consequences of tactical concessions

The central contribution of PoHR was the idea that even small concessions to rights principles had potentially powerful impacts. International human rights norms were seen as so powerful, that action or even talk meant simply to appease domestic critics or external peers or transnational “norm entrepreneurs” could actually unleash political and social forces that governments did not expect to face when the concession was made. Moreover, as discussed above, PoHR thought that speech acts which might initially have been primarily tactical eventually convince governments themselves that certain rights are desirable and appropriate behavior. This combination of influences, PoHR proposed, could improve the chances that human rights would be respected by that state.

One difficulty of testing this argument empirically is that it is hard to prove definitively which concessions to human rights are tactical and which are genuine. If qualitative researchers have had some difficulty establishing exactly why governments make minor adjustments to their rights policies, quantitative researchers working with global data have an even more difficult time. It is difficult to establish with any precision exactly which moves are “tactical.” Another reason for this gap in the spiral model’s DNA is that empirical researchers have tended to skip phase 4 of the spiral model (“prescriptive status”) in their impatience to get right to the punch line: behavioral change. But this means that a central claim of the spiral model has gone completely untested: no one has demonstrated the link between tactical concessions and the increased propensity for governments to actually begin to “talk the talk.”

Testing this central claim would require a kind of quantitative research that so far has been rare in the literature surveyed in this chapter: actual textual analysis of a relevant corpus of government statements, press releases, documents,

the ratification of human rights treaties is the democratic nature of the regime, which is consistent with an argument that countries are sincere ratifiers of these treaties (for the most part Simmons 2009). Ratification to lock in democratic gains in recently transitioned democracies is also a variation on sincere ratification (Moravcsik 2000). Sometimes there is genuine persuasion: “states are likely to be persuaded by arguments that draw on widespread taken-for-granted norms, in particular, prohibitions on bodily harm, the importance of precedent in decision making, and the link between cooperation and progress” (Hawkins 2004). See also Goodliffe and Hawkins (2006).

speeches and debates that would demonstrate a change in the language governments use when discussing policies related to rights practices. PoHR should expect (but to my knowledge no researchers have produced) evidence that the quality as well as the quantity of references to human rights increases over time once tactical concessions have been made. In fact, if the spiral model has some purchase on reality, it should be possible to produce statistical evidence of a growing correlation between indicators of the activation of domestic groups and the incidence of increasingly compelling “speech acts” as reflected in official documents such as those listed above. Better still, it should be possible to find a correlation between these speech acts and rights improvements (with some lag). Such an analysis would bolster the claim of the importance of consistently acknowledging the legitimacy of international human rights norms on actual outcomes. It would provide critical evidence about the importance of rhetorical entrapment in explaining eventual rule-consistent behavior.

The most studied “tactical concession,” as discussed above, has been the ratification of international treaties, although it is quite clear that most governments are sincere when they ratify (or sincerely refrain from doing so), while only a fraction appear to ratify without any intention to significantly change rights practices.⁶ Other less studied but possible tactical concessions might include institutional changes, such as the creation of national human rights institutions, the release of political prisoners, or the use of trials to prosecute egregious individual rights abusers. Very little research has been done on the effects of tactical concessions, outside of treaty ratification.⁷ And it is standard to skip any attention to rhetoric, and jump straight to the behavioral outcomes – dependent variables indicative of improved rights practices. The modal research of the 2000s looks directly for correlations between treaty ratification and improvements in rights behavior, not pausing for a moment to examine and attempt to verify the claims for the power of argumentation advanced by PoHR.

The findings of researchers who have examined this relationship between tactical concessions and actual improvements in human rights practice have been all over the map. This is true even though they use very similar data and related methodologies. The big difference is in how they choose to set expectations, the conditions (of lack thereof) they place on their arguments, and how exactly they measure outcomes. The first generation of quantitative research took a homogenous approach to treaty ratification. All states were assumed to be alike – or sufficiently similar – such that the early quantitative researchers saw no need to develop conditional arguments about how they thought ratification might work

⁶ Another relatively small set of countries maintain or improve their rights practices, but do not ratify international treaties, which raises another set of puzzles dealt with elsewhere (Simmons 2009).

⁷ The quantitative research on national human rights institutions focuses primarily on their creation and not, thus far, on their effects. See for example Koo and Ramirez (2009).

in various contexts. “Country-years” were simply pooled in a big regression, from which researchers tried to draw general inferences. Proceeding in this way, Linda Camp-Kelth found no statistically significant impact to ratification of the International Covenant on Civil and Political Rights (ICCPR) on Freedom House’s measure of civil and political rights, or Gibney and Stohl’s personal integrity index (Kelth 1999). Oona Hathaway found no positive impact to ratification of the Convention Against Torture (CAT) on her carefully constructed torture scale when pooling all states unconditionally into a single regression (Hathaway 2002). Emilie Hafner-Burton and Kiyoteru Tsutsui regressed the total number of major human rights treaties ratified on the political terror scale and found no relationship, again across all countries (Hafner-Burton and Tsutsui 2005). All of these scholars concluded that the ratification of human rights treaties did not matter. In fact, they argued that, in sharp contrast to the spiral model, such a tactical concession could even be deleterious. Ratification would *satisfy* critics, *deflect* criticism, *legitimate* repressive regimes, and allow them to continue or maybe even to worsen their repressive practices (Hafner-Burton *et al.* 2008; Hathaway 2002). Many concluded there was a growing “compliance gap,” although exactly what this meant in practice was somewhat unclear (see Chapter 5, this volume).

Why might these findings appear to be so pessimistic? It might very well be that this first generation of researchers was not specific enough about the conditions under which they expected the ratification of treaties to matter for rights practices. They may not have completely thought through the political and social mechanisms that would link a tactical concession such as treaty ratification to the possibility of an improved rights outcome. If they had, would they not have seen the obvious explanatory limits that the ratification of the Convention Against Torture would have in Norway, a country with a perfect score on Hathaway’s scale for the history of the index? Did they realistically expect North Korea’s 1981 ratification of the ICCPR⁸ to matter much in that country?

It is critical to understand, as PoHR clarified in their description of the spiral model, that tactical concessions *alone* do not improve the practice of human rights. Treaties are legal agreements written down on pieces of paper (or posted on the Internet) and they don’t have arms, legs, brains or iPhones. They can’t *do* anything. They must be used by purposive agents that have the motivation to leverage them to achieve their goals. Releasing a few political prisoners does not fundamentally improve rights, unless people are encouraged to demand broader changes in civil and political rights. Setting up national institutions can be a meaningless isomorphism unless bureaus have a certain degree of independence and sufficient resources to get started on serious work.

⁸ See www1.umn.edu/humanrts/research/ratification-korea.html (accessed June 1, 2010).

As PoHR was careful to spell out, non-governmental actors residing locally and also operating transnationally have an essential role to play in pressuring and persuading a government to follow up their symbolic gestures with real action. It does not make sense to argue that non-governmental organizations are “more important” than ratification, trials, institutions or the release of prisoners. Civil society, especially domestic actors with a huge and ongoing stake in the outcome, use these tactical moves to focus their efforts, build political support, legitimate their demands for human rights.

One insight of PoHR’s spiral model was that under specific circumstances tactical concessions would culminate with what they termed “prescriptive status” or better yet “rule-consistent behavior.” This was only likely where domestic civil society could become activated: “*Only when and if* the domestic opposition fully mobilizes and supplements the pressure ‘from above’ by pressure ‘from below’ can the transition toward prescriptive status and sustained improvement of human rights conditions be achieved” (PoHR: 34; emphasis added). PoHR was not very specific about the conditions under which it expected such mobilization to take place, but one approach is to think in terms of the expected value of mobilization. People will not mobilize when they do not expect much of a pay-off from doing so; after all mobilization against the government in many cases is costly and even dangerous. We can think of the *expected value of mobilization* as the product of two factors: the *value* people put on succeeding in achieving their goals and the *likelihood* of success. In other words, in order to really mobilize, people need a *motive* to organize and a *means* through which they might be able to influence their government to change its practices. In highly repressive regimes, the value placed on succeeding in securing a right is extremely high. It is a huge improvement in rights well-being to be free from arbitrary arrest for political reasons, and to be guaranteed reasonably humane treatment while in government custody. In highly repressive regimes, people are highly motivated to organize to seize on a tactical concession to call for even more concessions and to publicize the principles to which the government has rendered lip-service. The only problem is that they are likely to pay an extremely high price. Highly repressive regimes are likely to meet such demands by crushing them and making life very difficult for the leaders of the mobilization.

In other cases, governments can be expected to be relatively responsive to the demands of political opponents. In fact they may have such a long history of such responsiveness that there is very little “rights space” that the public does not freely and regularly enjoy. In these cases, people have the means to effectively put demands to the government, but they are not nearly so motivated. And because social mobilization and political organization require effort, few will have the motivation to organize to work for even better rights, which they experience as having diminishing marginal utility. So whereas the first few rights are extraordinarily highly valued, the 99th might not be worth taking to the streets. When allegations of torture were revealed at Abu Ghraib and elsewhere, for example,

they scarcely became part of the national electoral debate in 2004; Americans generally were content that in most cases their rights were well-protected and were not politically mobilized on this issue. This was an instance in which people had the means, but not especially the motivation, to demand compliance with the Torture Convention.

Thought of in terms of the expected value of mobilization, then, we should expect pressure “from below” in countries ruled by neither stable, repressive autocracies (where people are deterred from mobilizing for fear of getting crushed) nor in stable democracies (where decades of responsive government has supplied already a full range of rights – hence the motive to organize is weak). Tactical concessions should be expected to have their most profound impact where people anticipate they have some chance of successfully realizing their demands at reasonable cost. This implies that the spiral is most likely to work its way to a positive conclusion in neither stable autocracies (where domestic groups risk being crushed), nor stable democracies (where phase 1 repression is extraordinarily rare to begin with), but rather in countries that are transitioning to, backsliding from, or in a state of partial democracy (Simmons 2009). It is in those cases in which the pressure “from below” is most likely to become activated.

The quantitative research is now beginning to reflect this and other more conditional arguments about the relationship between tactical concessions and improved rights. Recent research is beginning to demonstrate for example that treaty ratification in countries whose regimes are in flux (neither stable autocracies nor stable democracies) does indeed have some important influence on rights practices. “Transition countries” that have ratified the CAT are much more likely to make improvements along Oona Hathaway’s torture scale than are transition countries that have not ratified the CAT. “Transition countries” that have ratified the ICCPR are more likely to provide fair trials, and are more likely to respect freedom of religion than are those transition countries that have not ratified. And in all of these cases, the positive consequences of ratification are concentrated in this category of countries; no effect could be found in either stable democracies or stable autocracies, *which is consistent with the spiral model and what might have been expected from the outset*. Tactical concessions matter tremendously, but only where domestic groups have the motive and the means to demand more meaningful change.

Recent quantitative work increasingly suggests that various other kinds of tactical concessions have a conditional impact on broader human rights practices. For example, Chapter 7 in this volume demonstrates that once a treaty has been ratified by a country subsequently investigated for widespread human rights abuses by the United Nations Human Rights Commission, human rights performance improves.

Another example of the importance of conditionality in explaining patterns of change relates to the presence or absence of trials for human rights violations.

In some cases, human rights trials might qualify as a “tactical concession.” Certainly, it is not obvious that a few trials will lead to any fundamental changes in human rights practices. New research suggests that *at least in transition countries*, such trials have had important rights consequences generally. Hunjoon Kim and Kathryn Sikkink argue that human rights trials work to some extent through their ability to deter future abuses, by reducing the probability that the crime will go unpunished (Kim and Sikkink 2007).

While Kim and Sikkink emphasize the deterrent effect of criminal trials, their work complements a large literature on the additional leverage litigation (whether successful or not) can give to broader social rights movements. “Cause lawyering” (Ellmann 1998) describes the strategic use of legal resources, such as treaties, constitutional provisions and the local penal code, to bolster claims in local courts that governments or in the case of torture specific government officials have broken the law by which they are bound.

The quantitative scholarship does reveal conditional but strong consequences that result from government actions that might correctly be termed “tactical.” The strongest findings are consistent with the idea that mobilization of domestic groups and the establishment and strengthening of the rule of law contribute to positive outcomes. Much more quantitative work could be done to explore the conditions under which strategic prisoner releases or the establishment of national human rights institutions or even constitutional innovations to incorporate rights might contribute to longer run rights improvements, but the data collection efforts are significant and research is just getting underway.

Conclusions

The pathway from commitment to compliance with international human rights norms has been highly varied across time and space. It has also been quite contingent, and fraught with setbacks as well as noteworthy successes. Almost every study of this pathway has emphasized the ways in which purposive actors have used international human rights norms to persuade, cajole, pressure and shame governments to live up to the commitments they have made to respect the rights of their own people. The spiral model was a succinct description of an ideal type of progression from commitment to compliance with human rights norms. Only a weak logic connected the stages of the model; the fulfillment of one stage presented the possibility – hardly the inevitability – of movement to the “next” stage. More than a decade of research has now accumulated to underline at least one conclusion: tactical concessions often have important human rights consequences. At least where agents with the motive and the means to organize domestically and transnationally, and where organizational pressures can be sustained, commitments have been associated with better human rights outcomes than one might have anticipated in their absence.

PoHR got at an essential truth – emboldening individuals and groups to view themselves as rights holders “triggers” a new politics based on altered expectations and new political alliances. Not everywhere and at all times; in fact, one weakness of the spiral model was its imprecision on scope conditions. PoHR perhaps was not clear enough on this issue in trying to explain why so many countries seem to get stuck at the point of making tactical concessions without ever coming close to rule-consistent behavior. Subsequent quantitative research suggests that one important scope condition is enough of a liberalizing opening to make domestic mobilization possible. Tactical commitments – especially legal ones like treaty ratification – also are likely to have much more traction where independent foci of authority (e.g. the courts) can independently support rights claims vis-à-vis the government. At the same time, some studies discussed above have supported the notion that external sources of material pressure, social shaming and group enforcement push the spiral along.

But it is hardly the case that methodological differences have dictated the answers to the question about what drive compliance with international human rights norms. Emilie Hafner-Burton and James Ron have written, provocatively, that “to date, assessments of efforts at protecting human rights have been shaped in large part by choice of research method” (Hafner-Burton and Ron 2009). They develop a detailed argument as to why qualitative researchers have been optimists, while quantitative researchers have come to much more pessimistic findings.

Why these findings should vary by research methodology is not quite clear, but in any case there is scarcely any systematic variance to explain between the findings of qualitative and quantitative researchers. As their own article notes, findings generally converge when investigators agree upon scope conditions.⁹ No researcher – quantitative or qualitative – has advanced the argument that international norms to treaties have a radical effect on human rights in countries where domestic opposition is immediately and brutally put down, just as no researcher of any methodological persuasion has argued that international norms and treaties operate independently of purposive actors and domestic or transnational politics. The most interesting research to date has been precisely on the specification of the mechanisms linking domestic and transnational politics, and using multiple methods to elucidate these connections (see Chapter 5, this volume).

⁹ Compare Hafner-Burton and Ron (2009: 368 and 371). First, somewhat cautious qualitative findings are attributed to scope conditions: “many qualitative studies noted important **scope conditions** for their claims, and many explicitly recognized that human rights progress is often partial ... not inevitable” (p. 368); three pages later, somewhat optimistic quantitative findings are attributed to scope conditions as well: “Second-generation statistical researchers have discovered some good news but attribute most of it to particular **scope conditions** and domestic factors” (p. 371).

This is not to say a good deal more could not be done in this regard. As quantitative researchers move away from their obsession with global trends, more quantitative data on more detailed domestic mechanisms can be collected within smaller groups of countries or regions. The research to date has been dominated by a few crucial human rights, such as repression, civil rights, torture and physical integrity. These are of central importance, but there is almost as much to be gained by comparing whether and how international norms such as the death penalty, women's rights and children's rights also impact local practices. And as PoHR's original volume stresses, there are many possible kinds of tactical concessions that could be explored. While current research has focused on treaty ratification, it would also be useful to find out if other kinds of tactical responses – from the release of prisoners to the payment of compensation to victims – have the effect of stimulating more demands and ever higher expectations from domestic and transnational audiences.

Finally, there is much to do quantitatively on the new research agenda that Thomas Risse and Stephen Ropp set out in the introductory chapter of this volume. The conditions under which non-governmental actors comply with international human rights norms remains hugely understudied by quantitative researchers (but see Greenhill *et al.* 2009). This is of course partly an artifact of the way data have been collected for decades: by and about *states*. Several of the contributions to this volume point to progress on moving away from an exclusive focus on *state* compliance. Firms are increasingly crucial actors both in terms of their direct impact on human rights as well as their status as civil society actors that can support or oppose demands for rights protections (see Chapters by 11, 12 and 13, this volume). The problems associated with sampling cases and collecting data on such varied, secretive and ephemeral entities as firms in an unbiased way is truly daunting. But until more work can be done to disaggregate the nature of the political actors with important influences over human rights outcomes, we will be missing a significant part of the dynamics that explain or impede the move from accepting principles to changing actual rights practices.

PROOF